

C. Remarks

The claims are 1-15 and 17-20, with claims 1, 12 and 13 being independent. Claim 16 has been cancelled without prejudice or disclaimer and its subject matter added to claim 13. Claims 17 and 18 have been amended to adjust dependency from cancelled claim 16 to claim 13. Applicant submits that no new matter has been added. Applicant notes with appreciation the Examiner's indication that claim 11 is directed to allowable subject matter. Reconsideration of the present claims is respectfully requested.

Claims 1-10 and 12-20 stand rejected under 35 U.S.C. §103(a) as being allegedly obvious over Capodieci (U.S. Patent No. 5,871,793). Claims 1, 2, 4, 8, 9, 12, 14, 19 and 20 stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by Capodieci. Applicant respectfully traverses these rejections.

Capodieci is clearly directed to making a puffed grain cake containing inclusions within the cake matrix. The inclusions of Capodieci are first intimately mixed with the grains without any precoating of the grains. Support for this position can be found throughout Capodieci. For example, at column 2, lines 13 - 16, the "...object of the present invention is to provide a process for the preparation of puffed cereal cakes that permits the inclusion of heat-sensitive edible materials into the puffed cereal cakes obtained by the method." In addition, at column 5, lines 38 - 40, the "...invention provides a puffed cereal cake having a heat-sensitive food product, flavoring or colorant incorporated therein." Further, in Examples 3 and 4, cereal and inclusions (blueberries in Example 3 and chocolate chips in Example 4) are first mixed together, then sprayed with water and stirred, then placed into the mold for forming the cake; the cereal is not pre-coated with anything

to get the inclusions to stick to it.

In contrast, the present application is directed to edible lightweight cores having temperature-sensitive inclusions adhered thereto, as well as to a process of making the same. The inclusions are not incorporated into a matrix which surrounds a plurality of cores as in Capodiecì, but instead are attached to the cores themselves by virtue of pre-coating the cores with a binder. In an effort to further clarify the invention and to highlight the need for such pre-coating, Applicant has now amended claim 13 to include the subject matter of claim 16; accordingly, it is clear that the cores are coated with binder comprising water, a film former, and an adhesive agent. Precoating of the cores alone is necessary to facilitate the adherence of the inclusions added later in the present invention. Capodiecì fails to disclose or suggest these key features of present product claims 12-15 and 17-20.

Furthermore, the present method claims (claims 1-10) are distinguishable from Capodiecì. In the first step of the inventive method, the surface of a lightweight, edible core is coated with binder to facilitate the adherence of a temperature-sensitive product to the exterior of the edible core. Capodiecì contains no such step and no suggestion of such a step. Likewise, Capodiecì contains no disclosure or suggestion of the second step of the inventive method, mixing binder-coated cores with the temperature-sensitive inclusions, since Capodiecì never forms binder-coated cores in the first place.

In sum, Capodiecì fails to anticipate or render obvious the presently claimed invention. Capodiecì is directed to a very different product and process than those claimed herein. Capodiecì's inclusions are incorporated within a larger matrix of food material, while the inclusions of the present invention are adhered to the exterior of a lightweight

edible core. Capodieci does not precoat cores with binder; such a precoat is essential to the present invention. Simply put, it just would not be obvious to one skilled in the art how to adhere inclusions on a core (as in the present invention) from Capodieci's teaching of incorporating inclusions into a grain cake matrix. For at least these reasons, Applicant submits that the present invention is novel and non-obvious and respectfully requests withdrawal of the art rejections premised upon Capodieci.

In view of the foregoing amendments and remarks, favorable reconsideration and passage to issue is earnestly requested. Should the Examiner believe that issues remain outstanding, the Examiner is respectfully requested to contact Applicant's undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

/Elizabeth F. Holowacz/
Elizabeth F. Holowacz
Attorney for Applicant
Registration No. 42,667

FITZPATRICK, CELLA, HARPER & SCINTO
1290 Avenue of the Americas
New York, New York 10104-3800
Facsimile: (212) 218-2200